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(2) With intent to annoy another, makes a telephone call, whether or not conversation thereby ensues; or

(3) Transmits in any manner to the fire department of any city, town, village or fire protection district a false alarm of fire, knowing at the time of such transmission that there is no reasonable ground for believing that such fire exists; or

(4) Transmits in any manner to another a false alarm to the effect that a bomb or other explosive of any nature is concealed in such place that its explosion would endanger human life, knowing at the time of such transmission that there is no reasonable ground for believing that such bomb or explosive is concealed in such place; or

(5) Transmit in any manner to any peace officer, public officer or public employee a report to the effect that an offense has been committed, knowing at the time of such transmission that there is no reasonable ground for believing that such an offense has been committed; or

(6) Enters upon the property of another and for a lewd or unlawful purpose deliberately looks into a dwelling on the property through any window or other opening in it.

(b) Penalty.

A person convicted of a violation of subsection 26-1(a) (1) or (a) (2) shall be fined not to exceed $500. A person convicted of a violation of subsection 26-1(a) (4), (a) (5) or (a) (6) shall be fined not to exceed $500 or imprisoned in a penal institution other than the penitentiary not to exceed 6 months, or both. A person convicted of a violation of subsection 26-1(a) (3) shall be fined not to exceed $500 or imprisoned in a penal institution other than the penitentiary not to exceed 6 months, or both, or shall be imprisoned in the penitentiary not to exceed 18 months. As amended

by act approved June 29, 1967. L.1967, p.——, H. B. No. 633.

Ill. Rev. Stat. Ch. 38, Sec. 31-1

31-1. § 31-1. **Resisting or Obstructing a Peace Officer.]**. A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer of any authorized act within his official capacity shall be fined not to exceed $500 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or both.

REASONS WHY THE WRIT SHOULD NOT BE GRANTED.

I.

THE REQUESTED WRIT OF CERTIORARI SHOULD NOT ISSUE SINCE THE ILLINOIS SUPREME COURT HAS PROPERLY DETERMINED THAT THE ILLINOIS DISORDERLY CONDUCT AND RESISTING A PEACE OFFICE STATUTES ARE CONSTITUTIONALLY APPLICABLE TO THE PETITIONER, AND SINCE THE CONDUCT INDULGED IN BY HIM IS NOT SUCH AS TO COME UNDER THE UMBRELLA OF FIRST AMENDMENT PROTECTION.

The petitioner has requested that this Honorable Court issue a Writ of Certiorari to the Supreme Court of the State of Illinois to review that Court's decision in the case of People of the State of Illinois v. Albert A. Raby, 40 Ill. 2d 392, 240 NE 2d 595 (set forth in the Appendix to the Petition for Certiorari). The only questions raised by the instant petitioner which even seem to be of true constitutional scope are those dealing with the application to him of the Illinois Criminal Code provisions dealing

with Resisting a Peace Officer and Disorderly Conduct. Ill. Rev. Stats., ch. 38 §26-1(a)(1), and Ill. Rev. Stats., ch. 38, §31-1. However, a reading of the well reasoned opinion of Mr. Justice Walter V. Schaefer, of the Illinois Supreme Court shows that that Court properly determined all of the issues presented to it and that there is nothing here which would warrant the issuance of the Writ of Certiorari which the petitioner has requested. United States Supreme Court Rule 19.1 specifically states that the granting of such a writ is not a matter of right but rather an exercise of the soundest judicial discretion. It is readily apparent from an examination of the opinion of the Supreme Court of Illinois that that Court has not decided any issue not many times previously determined by this Honorable Court, and that there is nothing in the opinion which might in any sense be in possible conflict with the past pronouncements of either this Court or of any of the United States District Courts.

Furthermore, it must be noted at the outset that the type of conduct indulged in by the instant petitioner is not such as falls under the umbrella of protection offered by the First and Fourteenth Amendments to the United States Constitution so that all of his claims of constitutional deprivation are completely without foundation.

A.

THE CONDUCT OF THE PETITIONER

The facts in the instant case were not in dispute and showed that on the evening of June 28, 1965, during the height of the "rush hour" traffic situation in the City of Chicago, the petitioner and a number of companions sat or laid down in the downtown intersection of La Salle and Randolph Streets (40 Ill. 2d 392, 394). They com-

pletely blocked the passage of traffic through this intersection and after some 20 minutes the police demanded they get up and be on their way. The petitioner, among others, refused to leave, "went limp", and had to be carried from the intersection by members of the Chicago Police Department (see Appendix to Petition For Certiorari, p.1-a). In its opinion the Illinois Supreme Court specifically found that this conduct was prescribed by the Illinois statutes in question and that it was not conduct protected under the provisions of the First and Fourteenth Amendments (Appendix to Petition for Certiorari, p.5-a) In so holding, Mr. Justice Schaefer cited the opinion of this Honorable Court in Cox v. Louisiana, 379 U.S. 536, 544 (1965). Therein, while the holding of the Louisiana Supreme Court was reversed because the statute there in question was found to be overly broad, this Court also noted that the protection offered by the First Amendment to the United States Constitution did not extend itself to such modes of expression as blocking the passage of traffic along the public streets.

The statement of Mr. Justice Schaefer, speaking for the Court is neither novel nor in any sense conflicting with previous pronouncements of this Honorable Court. Quite the contrary. The First Amendment protections cannot be applied to all modes of expression indiscriminately by the simple process of labeling all of the petitioner's conduct as "free speech" or free expression. United States v. O'Brien, 391 U.S. 367 (1968). As Your Honors pointed out in Poulos v. New Hampshire, 345 U.S. 395, (1953), at p. 405:

> "The principles of the First Amendment are not to be treated as a promise that everyone with opinions or beliefs to express may gather around him at any

> public place and at any time a group for discussion or instruction. It is a non sequitur to say that First Amendment rights may not be regulated because they hold a preferred position in the hierarchy of the Constitutional guarantees of the incidents of freedom. This Court has never so held and indeed has indicated the contrary. . ."

And the Court went on to say, at page 408:

> "There is no basis for saying that freedom and order are not compatible. That would be a decision of desperation. Regulation and suppression are not the same, either in purpose or result and courts of justice can tell the difference."

We submit that "telling the difference" is exactly what the Supreme Court of Illinois has done in the instant case. Your Honors have many times held that one of the reasons proper for police intervention in breaking up a group of persons is the clear danger that the result of the group's actions will be the interference with the passage of traffic upon the public thorofares. Feiner v. New York, 340 U.S. 315, 320 (1951); Cantwell v. Connecticut, 310 U.S. 296, 308 (1940). This Court recognizes the strong legitimate interest of the authorities in maintaining order upon the public streets. Kovacs v. Cooper, 336 U.S. 77, 82 (1949); Schneider v. State, 308 U.S. 147, 160 (1939). As one legal writer has put it:

> ". . . The Constitutional status of a grievance does not give First Amendment protection to every form utalizied to air it. Sitting down in Times Square or at the intersection of State and Madison, however lofty the objectives of the demonstrators may be, cannot be supported by Constitutional privilege." (Kamin, Residential Picketing And the First Amendment, 61 N.W. U.L. Rev. 177, 208 (1966)).

Therefore, as was found by Mr. Justice Schaefer, and his collegues, the conduct of the petitioner was not such as to come within the protection of the First Amendment to the United States Constitution. We therefore submit that his claims of Constitutional deprivation are without meaning and that he shows here no reason for the granting of the writ which he requests.

B.

NEITHER ILLINOIS STATUTE IS OVERLY BROAD NOR VAGUE.

There is no validity to the claims of the petitioner that the Illinois Statutory provisions dealing with Disorderly Conduct and Resisting a Peace Officer are overly broad or too vague to inform him in advance of whether or not his contemplated conduct might be prescribed by law. Both contentions were specifically rejected by the Illinois Supreme Court in their opinion.

As to the Disorderly Conduct Provision (Ill. Rev. Stat., ch. 38, §26-1(a)), Mr. Justice Schaefer pointed out that the petitioner's arguments overlook the clear meaning of the words used in the provision. He continued (Petition for Certiorari, pp. 2a-3a, 40 Ill. 2d 392, 395-396):

> ". . . That conduct must be engaged in "knowingly" and in "such unreasonable manner" as to provoke a breach of the peace. The word "knowingly" describes a conscious and deliberate "quality which negatives accident or mistake. "Unreasonable" is not a term which is impermissibly vague. As used in the Fourth Amendment it furnishes the governing standard by which the legality of police instructions upon privacy are measured. (Terry v. Ohio, 392 U.S. 1, 20 L.Ed. 2d 889.) As used in this statute it removes the possibility that a defendant's conduct may be measured

> by the effect upon those who are inordinately timorous or belligerent. The well recognized common-law term "breach of the peace" appears in §6 of Art. I of the Constitution of the United States."

As Justice Schaefer also pointed out, words of the statute must be given their usual and customary meanings and resort to all of the possible dictionary definitions of a term is not proper since by so doing one could render meaningless almost any penal statute. After all, almost all words vary in meaning as does the context in which they are used. Such a holding is also in complete conformity with the past pronouncements of the United States Supreme Court and other Federal Courts of review. The words of a statute are to be given their normal and customary meanings and are not to be viewed by courts of review from the point of grammarians or lexicographers. Beauharnais v. Illinois, 343 U.S. 250 (1952). The sufficiency of the words of a statute to limit its scope and to inform the accused of the conduct prohibited must be determined in view of the interpretation given the statute by the courts of the state in which it is enforced. Winters v. New York, 333 U.S. 507 (1948); United States v. Jones, 365 F. 2d 675 (2d. Cir.-1966).

What has been said above applies with equal force to the other statute here in question, Ill. Rev. Stats., ch. 38, §31-1, dealing with resisting a peace officer. As the opinion of the Illinois Supreme Court points out, this statute specifically provides for some active resistance of a person known to be a peace officer and further requires that that officer must be acting in his official capacity at the time of the resistance (40 Ill. 2d 392, 398-399; Petition for Certiorari, pp. 6a-7a). This certainly is not overly broad and it certainly does inform the potential actor of

what conduct is prohibited by the provision. In fact, the validity of both the Illinois Disturbing the Peace and Resisting a Peace Officer statutes have been upheld in the Federal Courts. United States v. Woodward, 376 F. 2d 136 (7th Cir.-1967); Landry v. Daley, 280 F. Supp. 938 (N.D. Ill. 1968). The statutes here in question were specifically found to be neither too vague nor too broad in scope. In fact, in both of these federal decisions, the conduct which was held to constitute resisting of a peace officer was precisely that of the instant petitioner, "going limp". The act of "going limp" has been held to constitute resisting of a police officer in a number of jurisdictions; Cf. In Re Bacon, 240 Cal. App. 2d 34 (1966); People v. Crayton, 284 N.Y.S. 2d 672 (Supreme Court of New York, 1967). In short, there is simply no doubt that the conduct of the petitioner was properly found to be that covered by the Resisting a Peace Officer statute and that any person would know that such conduct was prohibited. Furthermore, there is no question that the deliberate blocking of a busy intersection during the "rush hour" constituted an act of Disturbing the Peace and that it was not conduct protected by the First Amendment.

Therefore, the People of the State of Illinois submit that no reason has been shown by the petitioner for the granting of the Petition for Certiorari.

II.

THE REMAINING POINTS RAISED BY THE PETITIONER ARE MERELY PROCEDURAL AND IN NO WAY SUPPLY GROUNDS FOR THE ISSUANCE OF THE REQUESTED PETITION.

The remainder of the petition deals with a number of procedural points, none of which provide Your Honors with any reason for the issuance of a Petition for Certiorari to the Illinois Supreme Court.

A.

THE COMPLAINTS RETURNED AGAINST PETITIONER.

The complaints against the petitioner were phrased in the language of the appropriate statutes and informed the accused of the offenses charged and of the conduct for which he was being held responsible. This was sufficient to make both complaints proper. (Petition for Certiorari, pp. 7a-9-a, 40 Ill. 2d 392, 399-401). The test of an indictment is not whether it could have been made more definite and certain but whether it sets forth the elements of the offense, enables the accused to know what he will be required to defend against, and is specific enough to prevent the accused from once again being placed in jeopardy upon the same charges. United States v. Debrow, 346 U.S. 374, 376 (1963); United States v. Kahn, 381 F. 2d 824 (7th Cir.-1967); Cert. Denied 389 U.S. 1015. Indictments are read for their clear meaning and convictions will not be reversed because of minor deficiencies. Smith v. United States, 360 U.S. 1, 9 (1959). A reading of the indictments here in question clearly shows that they were sufficient to properly state the offense charged.

Furthermore, the petitioner is hardly in a position to complain about the amendment of the complaint which charged him with Resisting a Peace Officer (Petition for Certiorari, pp. 13-14). This contention is completely disposed of by the opinion of Mr. Justice Schaefer in the instant case, which shows that the amendment of this complaint was in accordance with the petitioner's own wishes. The Illinois Supreme Court states (Petition for Certiorari, pp. 8a-9a, 40 Ill. 2d 392, 400-401):

> The complaint for resisting arrest originally included an additional allegation: that, when placed under arrest, the defendant "refused to voluntarily accompany [the] arresting officer, and had to be physically carried away and while being carried, did kick, squirm, struggle in an effort to escape the custody of said officer." This allegation was stricken after the defendant complained that its inclusion left him in doubt as to whether he was being charged under section 7—7 or section 31—1 of the Criminal Code. The complaint specified only the latter section. Nevertheless, to prevent possible confusion, the State asked and was granted permission to strike the second allegation. The defendant now argues that it was reversible error to allow this amendment. The argument is without merit. Section III—5 of the Code of Criminal Procedure provides: "An indictment, information or complaint which charges the commission of an offense * * * may be amended on motion by the State's Attorney or defendant at any time because of formal defects, including: * * * (d) The presence of any unnecessary allegation. Ill. Rev. Stat., 1967, ch. 38, §III-5.

It is quite plain that the amendment to the complaint now complained of occurred at the instance of the petitioner himself. It is equally clear that no harm or prejudice could possibly have resulted to him for the action of the trial judge in allowing the amendment, and that the amend-

ment was proper under the provisions of Illinois criminal procedure. We do not believe that more need be said upon this question than was said by Mr. Justice Schaefer in the above quotation.

B.

THE AMENDED LIST OF WITNESSES.

The petitioner also contends that his right to fair trial was abridged by the allowance of the People's request to file an amended list of witnesses at the opening of the trial (Petition for Certiorari, pp. 14-15). When the amended list of witnesses was submitted, the petitioner objected but he did not ask for a continuance when the trial judge accepted the offer of the amended list by the People (Petition for Certiorari, pp. 9a-10-a). Now the petitioner makes a vague assertion that he was somehow prejudiced by the fact that he did not have the names of these witnesses earlier. Yet he has in no way indicated the manner of this prejudice to himself. This fact was noted by Mr. Justice Schaefer in the Illinois Supreme Court's opinion in the instant case There it was noted that the purpose of requiring a list of witnesses is to prevent surprise and to guard against false testimony, and that allowing the amendment of such a list is a matter within the sound discretion of the trial judge (40 Ill. 2d 392, 401-402; Petition for Certiorari, p. 10a). The Court then concluded:

> "In this case the defendant has at no time suggested that if he had been afforded an opportunity to prepare for the testimony of the unlisted witnesses he would have been able to produce rebuttal witnesses or to otherwise impeach the credibility of the unlisted witnesses. (See, People v. O'Hara, 332 Ill. 436, 442, 466.) Moreover, he himself testified to substantially

> the same facts. He has thus failed to make any showing that it was prejudicial to permit the unlisted witnesses to testify, or that their testimony in any way surprised him."

Under these circumstances no reversible error or violation of the constitutional rights of the petitioner could have resulted.

The petitioner attempts to analogize his position concerning the unlisted witnesses to that of the defendant in Pointer v. Texas, 380 U.S. 400 (1965), but the analogy is a false one. In Pointer v. Texas, the defendants were convicted of robbery largely on the basis of testimony elicited from a witness during the course of a preliminary hearing at which the defendants were not represented by counsel. This damaging witness was not available to the prosecution at the time of the trial. His testimony was received by the trial court by way of a transcript of the preliminary hearing, thus completely depriving the defendants of the right to confrontation and cross-examination. This is far different from the instant factual situation, as are the holdings in the other cases cited by the petitioner in his argument concerning the witness list.

Once again, there is nothing to be found here but an allegation that the petitioner was in some way deprived of his constitutional rights and that in some way the decision of the Supreme Court of Illinois is erroneous. But there is no substantiation of any of these allegations and nothing here which would suggest that he is entitled to the issuance of the Writ of Certiorari.

C.

THE INSTRUCTION TO THE JURY.

Finally, the petitioner alleges that the jury was not properly instructed. However, it will be noted that he himself is forced to admit that the jury was given instructions as to both offenses which set out the elements of the crimes in the language of the respective applicable statutes (Petition for Certiorari, pp. 15-16). He seems once again to contend that since the statutes are unconsitutional, these instructions did not properly inform the jury. The propriety of the statutory provisions has already been discussed here at some length. Suffice it to say here that the statutes were proper and that the instructions given in their language informed the jury of the law applicable to the petitioner's conduct.

The petitioner complains of the instruction which told the jury:

> "The court instructs the jury, as a matter of law, that resisting a peace officer in the performance of his duty may be passive as well as active. To interfere and obstruct does not require active resistance and force."

As has been earlier pointed out, passive resistance such as "going limp"—as the petitioner did here—has been held to be resisting a peace officer. See, Landry v. Daley, 280 F. Supp. 938 (N.D. Ill., (1968)). Such an instruction was a perfectly proper statement of the law and as such the jury was entitled to hear it. The giving of this or the other instructions concerning the nature of the two charged offenses was anything but error.

CONCLUSION

For the above and foregoing reasons, the People of the State of Illinois most respectfully submit to this Honorable Court that the request of Albert A. Raby for the issuance of a Writ of Certiorari to the Supreme Court of Illinois in the instant case be denied.

Respectfully submitted,

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